



Environmental Remediation Group

Olin Corporation

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Sent via Electronic and Overnight Carrier

November 10, 2017

Mr. Leonardo Chingcuanco
Office of Regional Counsel
U.S. EPA Region 5 (C-14J)
77 West Jackson Blvd.
Chicago, IL 60604

Re: Response to Request for Information Pursuant to Section 104 (e) of CERCLA
U.S. Smelter and Lead Refinery, Inc. Superfund Site
East Chicago, IN
Site Spill Identification Number: 053J

Dear Mr. Leonardo Chingcuanco

Enclosed is Olin's response (Attachment C) to the USEPA Request for Information regarding the U.S. Smelter and Lead Refinery, Inc. Superfund Site, East Chicago, IN. ("Site").

Olin employees contacted have no knowledge of any involvement at the Site and Olin has found no documents in its possession relating to the operations at the Site.

Olin has reviewed information provided by the USEPA regarding alleged Olin involvement at the Site. Most of the documents provided were not related to Olin. A summary (Exhibit A) and a copy of those documents are attached.

Of the documents received which were related to Olin, a thorough review reveals that there were 10 lead bar shipments to Olin purchased from the Site. One truck shipment in 1982 has incomplete information. Olin has no CERCLA liability for any purchases made *from* the Site.

OLIN CORPORATION

USEPA documents show 6 shipments of lead from Olin to the Site. These shipments were actually sold to M. S. Carr Lead Products Co., East St. Louis, IL (M. S. Carr) but shipped directly from Olin to the Site. One truck shipment in 1974 has incomplete information and a shipments in 1959 and an Assay Report in 1966 is also incomplete.

The documented "Final Settlement" assays for shipments from Olin via M. S. Carr to the Site range from 90.17 to 92.31% Lead plus Antimony.

This material is covered by the Superfund Recycling Equity Act ("SREA"). 42 U.S.C. § 9627. The goals of the SREA were to promote recycling of scrap material, create greater equity in statutory treatment of recycled versus virgin materials, and to remove the disincentives and impediments to recycling created as an unintended consequence of CERCLA. See Act of Nov. 29, 1999, Pub. L. No. 106-113, § 6001, 1999 U.S.C.C.A.N. (113 Stat.) 1501A-598. To meet these goals, the SREA sets out a statutory framework for establishing that a person who "arranged for recycling of recyclable material shall not" be subject to arranger liability under CERCLA.

Courts have also recognized an exception to CERCLA liability for a party who "arranged" for disposal or treatment" of hazardous substances, if the transaction was the bona fide sale of a useful product.

The "useful product doctrine" provides that "if a party merely sells a product, without additional evidence that the transaction includes an 'arrangement' for the ultimate disposal of a hazardous substance, CERCLA liability [will] not be imposed." *Freeman v. Glaxo Wellcome, Inc.*, 189 F.3d 160, 164 (2nd Cir. 1999) (quoting *Fla. Power & Light Co. v. Allis Chalmers Corp.*, 893 F.2d 1313, 1317 (11th Cir. 1990)). To determine whether the doctrine applies, courts must ascertain whether a particular transaction is in fact the sale of a useful product for legitimate business purposes or is instead the sale or transfer of hazardous waste which no longer has a useful purpose to avoid liability for disposing of hazardous waste. *Team Enters, LLC v. W. Inv. Real Estate Trust*, 647 F.3d 901, 908-09 (9th Cir. 2011).

In *United States v. Mountain Metal*, 137 F. Supp. 2d 1267 (N.D. Ala. 2001), the court found that a company that sold lead plates with residual acid on the plates to a lead recovery company qualified for the useful product defense. The court opined that the sales of the lead plates in a form that allowed the purchaser to place them directly in the furnace for smelting was the sale of "a raw material ready for processing" and was thus the sale of a "complete useful product." *Id.* at 1275-76.

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The materials that were sold to M. S. Carr and shipped to the Site. The recovery content of lead and antimony exceeded 90%. All those materials are exempt under the SREA or the "useful product doctrine" and, therefore, Olin has no CERCLA liability at the Site.

Olin also asks that USEPA consider its volume of lead shipments with respect to the overall volume of lead processed at the Site. The Site was only one of three facilities that allegedly contributed to the contamination in the area. The Site operated for approximately 80 years, from the early 1900s until 1985. That included decades of operation before the 1970s. Materials provided with the General Notice Letter indicate that 30,000 - 40,000 tons of material were sent to the Site each year from 1920 until the early 1970s. Olin's alleged volume, according to USEPA documents, is de minimis under any calculation, as compared to the total volume of lead processed at the Site.

As such, we respectfully request that Olin not be named on USEPA's forthcoming Unilateral Administrative Order.

If the USEPA has additional information regarding Olin's potential involvement at the Site, please send ASAP so Olin can review.

Very truly yours,



Curt M. Richards
Vice President,
Environment, Health & Safety

Cc: Annette M. Lang - Department of Justice
Lisa A. Funderburg - Olin

Enclosure C
Information Request
USS Lead Site

REQUESTS

General Objections

Olin Corporation ("Olin") objects to each and every question to the extent it exceeds the authority of EPA under Section 104(e) of CERCLA, insofar as a particular question fails to limit the scope of the inquiry to:

1. The identification, nature and quantity of materials which have been or are generated, treated, stored or disposed of at the Site (as defined in the Request for Information) as provided in CERCLA Section 104(e)(2)(A), 42 U.S.C. Section 9604(e)(2)(A);
2. The nature or extent of a release of a hazardous substance or pollutant or contaminant at or from the Site, as provided in CERCLA Section 104(e)(2)(B), 42 U.S.C. Section 9604(e)(2)(B);
3. Information relating to the ability of Olin to pay for or perform a cleanup, as provided in CERCLA Section 104(e)(2)(C), 42 U.S.C. Section 9604(e)(2)(C).

For each and every question, Olin objects to the definitions and instructions included in the Information Request as overbroad, vague and ambiguous, and as exceeding the scope of EPA's authority for purposes of a CERCLA Section 104(e) information request.

Olin objects to each question to the extent the question asks for information or documents protected by the attorney-client privilege, the attorney work-product privilege, the privilege related to materials generated in anticipation of litigation and/or any other applicable privilege. Olin objects to each question to the extent that it requires a legal conclusion, which exceeds the scope of EPA's authority under CERCLA Section 104(e).

Olin objects to each question to the extent the question seeks documents or information already in the possession of a government agency and/or already in the public domain. Any documents produced herein that are included in this category are produced without waiver of this or any other objection.

These General Objections are incorporated by reference into each of the responses set forth below to the fullest extent applicable. Olin provides the responses set forth below subject to, and without waiving, these General Objections and any additional objections set forth in response to the individual requests.

1. Identify the respondent(s) to these questions.

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2. Identify all persons consulted in the preparation of the answers to this request for information.

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3. If you have reason to believe that there may be persons able to provide a more detailed or complete response to any question or who may be able to provide additional responsive documents, identify such persons.
4. For each and every question contained herein, identify all documents consulted, examined, or referred to in the preparation of the answer or that contain information responsive to the question and provide true and accurate copies of all such documents.
5. Describe the lead-bearing material that Respondent arranged to have treated, disposed of, or transported to the Site.

No records have been found.

6. Provide the correct name and addresses of Respondent's plants and other facilities where Respondent carried out operations that acquired, generated, or came to possess lead-bearing material that came to be located at the Site.
 - a. For each of those plants or facilities, provide a brief description of the nature of Respondent's operations at that plant or facility, including the date such operations commenced and concluded; and

No records have been found.

- a. Provide a brief description of the types of work performed at each plant or facility, including but not limited to the industrial, chemical, or institutional processes and treatments undertaken at each plant or facility.

No records have been found.

7. Describe any arrangement whereby Respondent came to own or possess lead-bearing material that came to be located at the Site, without that material being processed or routed through any of Respondent's plants or facilities.

No records have been found.

8. What was the monthly or annual quantity of lead-bearing material that Respondent arranged to have treated, disposed of, or transported to the Site?

No records have been found.

9. What was the total quantity of lead-bearing material that Respondent arranged to have treated, disposed of, or transported to the Site?

No records have been found.

10. Was lead-bearing material treated at Respondent's plants or facilities before transport to the Site?

No records have been found.

- a. What treatment process(es) took place?
- b. What was the result?

No records have been found.

11. Was lead-bearing material separated (e.g., physically or chemically) from other materials at Respondent's plants or facilities, before transport to the Site?

No records have been found.

12. Describe how each type of lead-bearing material was collected and stored at Respondent's Facility prior to disposal/treatment/recycling/sale/transport at or to the Site.

No records have been found.

13. Identify any third parties other than USS Lead that Respondent sent or arranged to send lead-bearing material to for treatment, and the dates the lead-bearing material was sent for treatment, where they were sent for treatment, what treatment processes took place, the result of the treatment process, and the disposition of the lead-bearing material.

No records have been found.

14. Apart from contracting for treatment or disposal of lead-bearing material through another entity or party, did Respondent ever dispose of lead-bearing material itself?

No records have been found for this time frame.

- a. If so, describe in detail the circumstances of Respondent's disposal, including what was disposed, when the disposal(s) took place, where the substances were disposed, and the quantity, amount, or volume disposed. Include any documentation relating to such disposal.

15. With respect to lead-bearing material of the type treated at, disposed of at, or transported to the Site, explain what Respondent did with these materials if Respondent could not find a buyer to purchase such material, including all methods of use, handling, treatment, sale, recycling, and disposal, and how much Respondent paid or received for each such method.

No records have been found for this time frame.

16. for its disposal, treatment, storage, recycling, or sale.

- a. Provide any agreement and document, including waste logs, journals, or notes, related to any transfer of lead-bearing waste from Respondent's facilities or plants that came to be located at the Site.

No records have been found.

- b. Provide all correspondence and written communications, including but not limited to emails, between Respondent and U.S. Metals Refining Company, U.S. Smelter and Lead Refinery, Inc., U.S. Smelter, Refining and Metals Company, regarding the Respondent's lead-bearing waste that came to be located at the Site.

No records have been found.

17. Did Respondent sell or transfer the lead-bearing waste to other locations besides the Site?

No records have been found for this time frame.

- a. If so, provide any agreements and documents, including waste logs, journals, or notes, related to the transfer of the lead-bearing waste from Respondent's plants or facilities to locations other than the Site.

18. Did Respondent ever request from the buyer that lead or lead-bearing material be returned to Respondent after buyer's treatment or handling of the lead-bearing waste was completed?

No records have been found.

- a. If so, explain the details of such transaction(s). Provide any documentation relating to any return to Respondent of lead or lead-bearing wastes.

19. Identify, describe, and provide all documents that refer or relate to:

- a. The nature, including the chemical content, characteristics, physical state (e.g., solid, liquid) and quantity (volume and weight) of all lead-bearing waste involved in each arrangement transferring materials from any facility owned or operated by Respondent to any other facility.
- b. The condition of the transferred material containing hazardous substances when it was stored, disposed of, treated or transported for disposal or treatment.
- c. The markings on and type, condition and number of containers in which the hazardous materials were contained when they were stored, disposed, treated, or transported for disposal or treatment.
- d. All tests, analyses, analytical results and manifests concerning each lead-bearing waste involved in each transaction. Include information regarding who conducted the test and how the test was conducted (batch sampling, representative sampling, splits, composite, etc.)

No records have been found for this time frame.

20. Provide any correspondence or other communications between Respondent and the buyer regarding what the buyer planned to do with the lead-bearing waste.

No records have been found.

US Smelter & Lead Refinery

Information from USEPA

EXHIBIT A

Shipments to Olin:

<u>Date</u>	<u>Product</u>	<u>Quantity (lbs.)</u>			
1979-01-17	1.02 % Antimonial Lead	14,559			
1981-12-03	3% Antimonial Lead	41,329	72318	Trailer #42632	780 Bars
1981-12-03	3% Antimonial Lead	41,499	72319	Trailer #40545	780 Bars
1981-12-03	3% Antimonial Lead	41,490	72323	Trailer #40577	780 Bars
1981-12-04	1.25% Antimonial Lead	40,811	72339	Trailer #45818	780 Bars
1981-12-04	1.25% Antimonial Lead	41,406	72341	Trailer #45756	780 Bars
1981-12-04	1.25% Antimonial Lead	41,527	72345	Trailer #45810	780 Bars
1981-12-07	3% Antimonial Lead	39,944	72350	Trailer #45872	780 Bars
1981-12-07	3% Antimonial Lead	39,648	72353	Trailer #40569	780 Bars
1981-12-07	3% Antimonial Lead	39,725	72354	Trailer #40586	780 Bars
1982-06-08	Incomplete information				

Shipments to USS Lead:

1	1958-04-07	90.17% Pb + Antimony	97,700	Lot # 522	R/C # 169937	Sold to M. S. Carr
2	1958-07-07	92.31% Pb + Antimony	96,400	Lot # 583	R/C # 166020	Sold to M. S. Carr
3	1966-11-01	90.51% Pb + Antimony	73,671	Lot # 107	R/C # 61054	Sold to M. S. Carr
4	1966-11-29	91.61% Pb + Antimony	106,757	Lot # 151	R/C # 23251	Sold to M. S. Carr
5	1967-03-28	91.94% Pb + Antimony	113,147	Lot # 352	R/C # 41325	Sold to M. S. Carr
6	1968-12-13	91.12% Pb + Antimony	105,300	Lot # 265	R/C # 206438	Sold to M. S. Carr
7	1974-12-06	96.64 % Pb	2,934	Lot # 910	Trailer # 4221	?
	1959-12-09	Incomplete information				
	1966-08-15	Incomplete information		Lot # 859		